



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: October 11, 2000 REPORT NO. 00-209

ATTENTION: Honorable Mayor and City Council
Docket of October 16, 2000

SUBJECT: Mission Beach Boardwalk Encroachments

REFERENCE: Manager's Report No. 00-184, dated September 13, 2000
Manager's Report No. 96-40, dated February 28, 1996
Manager's Report No. 98-109 (revised), dated May 20, 1998
Final Environmental Impact Report, LDR No. 96-0721

SUMMARY

Issue - Shall City Council adopt, and direct the City Manager to apply, criteria to be used in implementing previous City Council direction to review applications for Encroachment Removal Agreements to build private walls or fences within the Mission Beach Boardwalk Widening Project's eastern three feet (landscaped buffer area) where existing residences or businesses were legally built with three or fewer feet of setback from the public right-of-way?

Manager's Recommendation - Adopt criteria described in this report and direct the City Manager to apply them in reviewing encroachment applications.

Other Recommendations - None.

Fiscal and Business Impact - None with this action. The potential for granting Encroachment Removal Agreements to property owners where residences or businesses were legally built with three or fewer feet of setback from the public right-of-way was addressed in the Environmental Impact Report (EIR) for the Boardwalk Widening Project.

BACKGROUND

During public hearings on the Mission Beach Boardwalk Widening Project, there was discussion about whether or not to allow adjacent properties to use any portion of the public right-of-way to replace walls/fences that would be removed as a part of the project. The discussion ranged from allowing all adjacent properties to use substantial portions of the right-of-way, to not allowing them any use of the right-of-way under any circumstances. Some adjacent property owners expressed concern that implementation of the plan would result in their not having room to build private walls or fences on the west side of their property if they wished. The plan's Drainage and Hydrology analysis indicated that existing private walls provide minor benefit in terms of protection from wave action. However, to accommodate the property owners' concern, City Council included the following element in the project:

“Where adjacent property owners legally built with three or fewer feet of set-back from the three-foot landscaped buffer, the City Council would consider individual applications to rebuild private storm protection walls up to three feet from the private structure (one-to-three feet within the landscaped buffer) with new Encroachment Agreements. If such walls are approved, additional improvements such as paving or landscaping patio areas could be allowed within these encroachments.”

The above quote is from the description of the Eastern Widening Alternative in the EIR for the project, which was certified by City Council in 1998. Similar verbiage is contained in project descriptions dating back to 1996. This project element provided that: 1) every legally built property could be allowed a width of 3 feet in which to build a private wall; and 2) up to 3 feet of the public right-of-way otherwise designated for landscaped buffer could be used for this purpose.

The attached graphics were presented at a City Council hearing to help people visualize the project. Attachment 1 shows the location of the landscaped buffer area in relation to the lanes of travel. Attachment 2 shows how property owners would be allowed to build within the landscaped buffer area of the public right-of-way as a result of this project element. Even where properties are allowed to encroach into and use the entire eastern three feet of public right-of-way (landscaped buffer area), the private walls/fences will be separated from the northbound wheeled travel lane by a two-foot wide paved buffer.

At the Natural Resources and Culture (NR&C) Committee on September 20, 2000, a Clairemont resident testified in opposition to the criteria proposed in this report based on his opposition to the entire project element adopted by City Council, which is described in the quotation, above. In response to an oceanfront property owner's testimony in favor of the criteria and request that the criteria be forwarded expeditiously to City Council, NR&C forwarded the issue to City Council with the direction that the Manager's Report address the concerns raised by the Clairemont resident. That citizen's proposal and the Manager's reasons for recommending against the proposal are included in Attachment 3. In brief, the Manager recommends against adoption of the

citizen proposal because its implementation would: result in a potential threat to the safety of boardwalk users; significantly reduce the drainage and aesthetic benefits of the adopted project; not appreciably increase the view by boardwalk users of persons entering the boardwalk from the east; and not provide property owners that built with fewer than 3-feet of setback enough room to both build a new wall and be able to walk between their residence/business and the new wall.

It is proposed that when the following criteria are met by an application for encroachment into the eastern three feet of public right-of-way on Ocean Front Walk, City staff may grant an Encroachment Removal Agreement (ERA). The criteria are consistent with the City Council-approved Mission Beach Boardwalk Widening Project and certified EIR.

Proposed Criteria

1. The western-most load-bearing wall of the applicant's residence or business is less than 36 inches from the eastern edge of the public right-of-way, as established by the City, and evidence is provided that the residence or business was legally built.
2. A wall or fence along Mission Beach Boardwalk is included in the application.
3. The wall or fence does not exceed 36 inches in height.
4. The wall or fence is smooth-faced on the western side.
5. All corners of the wall or fence are rounded.
6. The wall or fence does not have: sharp edges or protrusions; a gate that swings west; or gate hinges that extend west of the wall or fence.
7. The western-most edge of any part of the wall or fence, including the footing, is not more than 36 inches from the western-most load-bearing wall of the residence or business.
8. The western-most edge of the wall or fence, including the footing, does not extend west of the 3-foot portion of public right-of-way designated for landscaped buffer.
9. Any other encroachments in the right-of-way are limited to: paving, and landscaping with a maximum growth height of 36 inches that will not extend west of the wall or fence.
10. In the judgment of City staff, nothing in the proposed encroachments constitutes a health or safety concern.
11. The ERA will contain the conditions required by San Diego Municipal Code (M.C.) Section 62.0302, as well as at least one additional condition: If development, as defined in M.C. section 113.0103, of the property results in a permit requirement by any agency to

conform with the setback requirement on Ocean Front Walk, then the property owner will remove subject encroachments and pay to install the project improvements in the 3-foot portion of public right-of-way designated for landscaped buffer.

12. Exceptions: Where the City has cut an opening in the above-grade portion of the boardwalk's seawall, and there is not a secondary seawall west of the opening, owners of property on Ocean Front Walk within fifty feet north or south of such opening in the boardwalk's seawall may apply for an ERA up to the length of that property's frontage on Ocean Front Walk, conditioned on complying with criteria #2, 5, 6, 8, 10 and 11, above.

ALTERNATIVES

1. Require all applications for boardwalk encroachments to be heard by City Council or one of its Committees.
2. Approve criteria for staff review of encroachments other than those listed in this report.

Respectfully submitted,

Marcia C. McLatchy
Park and Recreation Director

Approved: George I. Loveland
Assistant City Manager

McLATCHY/TW

- Attachments:
1. Plan View of Boardwalk Widening Project
 2. Graphic of Encroachments Allowed in Public Right-of-Way
 3. Citizen Proposal and Manager's Review

Note: Attachments 1 and 2 are not available in electronic format. A copy is available for review in the Office of the City Clerk.

**Proposal Presented by Citizen at NR&C Committee on September 20, 2000
and Review by City Manager**

Citizen Proposal

On September 20, 2000, the Natural Resources and Culture (NR&C) Committee heard public testimony on the Manager's recommendations for Mission Beach Boardwalk encroachment criteria. A Clairemont resident, Mr. Billy Paul, presented the following proposal:

“Where adjacent property owners built with fewer than three feet of setback from the public right-of-way, property owners may be allowed to: 1) finance the City of San Diego building a uniform 3-foot high, smooth-faced wall within the eastern-most one foot of the right-of-way; 2) (where property owners have an existing door which requires access to the public right-of-way) have a gate in that wall which swings west, and that this gate: a) be hinged on the south side of the opening, and b) have a protective barrier built on the south side before the opening in the remaining 2-foot wide buffer area (to protect boardwalk wheeled users from being hit by the opening gate). In the remaining 2-foot wide area intended for landscaped buffer, the City: 1) plant landscaping south of all private gates, and 2) install pavement north of all private gates, which could be used by those property owners for travel between their gates and perpendicular public access to the boardwalk. Objectives are to ensure that where a wall is built in the public right-of-way adjacent to properties with fewer than three feet of setback: 1) northbound wheeled boardwalk users' view of children under 4 years of age and of persons in wheelchairs entering the boardwalk from the east is unobstructed by encroachment walls or by landscaping; 2) the wall needs to be uniform in appearance and smooth-faced because of it being located in the public right-of-way and one foot closer to the paved right-of-way than walls on private property; 3) enforcement of standards on encroachments in the public right-of-way has been difficult; 4) enforcement efforts to remove previous encroachments in this area have resulted in litigation and delays; and 5) property owners have a right to reasonable access to the public right-of-way also.”

Manager's Review of Proposal

The Manager recommends against adoption of the citizen proposal for the following reasons:

Impact on Adopted Project and Certified EIR

The citizen proposal, if adopted, would result in a change to the previously adopted project and would potentially require a change to the certified EIR, which has been upheld in both trial and

appellate courts. The citizen bases his request on the fact that at the time of project adoption, the path for wheeled users was relocated from the west side of the boardwalk to the east side. He believes that the decision about allowing encroachments in the right-of-way was not made within the context of the wheels being located on the east side of the boardwalk. This is not the case. The citizen's concerns about boardwalk users having sufficient sight distance of people entering the boardwalk from the east, whether the boardwalk's wheeled users are located on the west or east, was addressed in the certified EIR.

Impact on Safety of Boardwalk Users

If implemented, the citizen proposal would result in a potential threat to the safety of boardwalk users. This is because the proposal indicates that properties with existing doors in their structures which, when opened, would encroach into the public right-of-way, would be allowed to have gates in the new wall which would swing west, further into the right-of-way, buffered by permanent protective barriers. This would pose a potential threat to boardwalk users because a gate swinging west into the public right-of-way could be an unexpected, intermittent obstacle to adjacent boardwalk users, and the protective barrier itself could be an unexpected, permanent obstacle to those same users. By contrast, in many cases in the proposed project there would be sufficient space for the doors of residences/businesses to open westward behind the private wall/fence. Where there would be insufficient space for a structure's door to open westward, the property owner could either replace that exit with a sliding door, relocate the door or discontinue using the door.

Impact on Drainage and Community Aesthetics

The citizen proposal, if implemented, would significantly reduce the drainage and aesthetic benefits of the adopted project. This is because the proposal indicates that the City would install pavement instead of landscaping north of each of the westward swinging private gates in the wall, which would result in less area being landscaped. This would negatively impact one of the objectives of the landscaped buffer, which is to absorb water draining west from the private properties in order to keep it off the boardwalk. It would also reduce the total amount of project landscaping, which helps to mitigate the loss of landscaping in the private patios that are removed from the public right-of-way as a result of this project.

Impact on View of Children and Persons in Wheelchairs Entering the Boardwalk

If implemented, the citizen proposal would not appreciably increase the view by boardwalk users of children or persons in wheelchairs entering the boardwalk from the east. This is because the citizen proposal is not to install pavement instead of shrubbery throughout the eastern 2-3 feet of public right-of-way. The proposal is only to install pavement instead of shrubbery north of locations where there is a westward swinging gate in the new wall. Since both the project shrubbery and the private walls are 3-feet tall, they occupy nearly equivalent places in the viewshed. By contrast, the adopted project greatly improves the current view by boardwalk users of all persons entering the boardwalk from the east. This is because the adopted Boardwalk Widening project generally provides a distance of 5 feet (2 feet of pavement and 3

feet of landscaping) between the northbound wheeled users and the private walls. The exception is the project element under discussion in the attached Manager's Report, wherein the project provides a minimum distance of 2 feet of pavement between the northbound wheeled users and the private walls. This exception would occur in approximately 40 instances where property owners legally built with fewer than 3 feet of setback. This 2-foot distance between the northbound travel lane and the private walls is a 2-foot improvement over the present condition where 3-foot high private walls directly abut a mixed-use, pedestrian-wheeled path, and people enter the boardwalk directly into that mixed-use path.

Impact on Adjacent Properties

The citizen proposal, if implemented, would not provide property owners that built with fewer than 3 feet of setback enough room to build new walls, to replace the walls removed to accommodate the boardwalk widening, and be able to walk between their residences/businesses and the new wall. This proposal would result in approximately 20 properties that built their structures on the very edge of the public right-of-way being allowed to pay the City to build a wall in the eastern one-foot of right-of-way. In other words, for these properties, a 6-inch wide wall could be located 6 inches from their residence or business. For the approximately 12 properties that built their structures about ½ foot from the edge of the right-of-way, a 6-inch wide wall could be located one-foot from the residence or business. Another approximately 5 properties which are setback one-to-three feet from the right-of-way could have 1 ½ to 3 ½ feet of separation from the new wall. However, the citizen proposal compensates by providing a paved area west of the new wall for these property owners to walk north until they intersect either a section of landscaped buffer or a perpendicular public right-of-way. By contrast, the adopted project provides room to build a new wall and to walk between that wall and the residence/business.

Impact on Standards and Litigation

Finally, Mr. Paul's concern about encroachment standards, including that the walls be smooth-faced, is addressed in the proposed criteria. His concern about litigation and delays is related to existing private walls, not to the permitting of new walls under specific criteria.